APPENDIX

Constitution of the United States, Article I:

SECTION 9. * * *

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

* * * * *

Revised Statutes:

SEC. 233. There shall be at the seat of Government an Executive Department to be known as the Department of the Treasury, and a Secretary of the Treasury, who shall be the head thereof. (5 U. S. C., 241.)

SEC. 246 [as amended]. The Secretary of the Treasury may, by an appointment under his hand and official seal, delegate authority to the Assistant Secretaries of the Treasury to sign in his stead * * * all warrants for the payment of money into the public Treasury and all warrants for the disbursement from the Public Treasury of money certified by the General Accounting Office to be due upon accounts duly audited and settled by them * * *. (5 U. S. C. 248.)

SEC. 248. The Secretary of the Treasury shall, from time to time, digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; shall superintend the collection of the revenue; shall, from time

to time, prescribe the forms of keeping and rendering all public accounts and making returns; shall grant, under the limitations herein established, or to be hereafter provided, all warrants for moneys to be issued from the Treasury in pursuance of appropriations by law; shall make report, and give information to either branch of the legislature in person or in writing, as may be required, respecting all matters referred to him by the Senate or House of Representatives, or which shall appertain to his office; and generally shall perform all such services relative to the finances as he shall be directed to perform. (5 U. S. C. 242.)

SEC. 301 [as amended]. There shall be in the Department of the Treasury a Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of eight thousand dollars a year. (31 U. S. C. 141.)

SEC. 305 [as amended]. The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned in the General Accounting Office, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all moneys received by him; and all receipts for moneys received by him shall be indorsed upon warrants signed by the Secretary of the Treasury, without which warrant, so signed, no acknowledgment for money received into the public treasury shall be valid. He shall render his accounts to the General Accounting Office quarterly, or oftener if required, and shall transmit a copy thereof, when settled, to the Secretary of the Treasury. He shall at all times submit to the Secre-

tary of the Treasury and the General Accounting Office, or either of them, the inspection of the moneys in his hands. (31 U. S. C. 147.)

Permanent Appropriation Repeal Act, 1934, c. 756, 48 Stat. 1224:

SEC. 20. (a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: * * * (31 U. S. C. 725s.)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 854.

R. H. ROBINSON, LOWRANCE BROTHERS & COMPANY, INC., a corporation, LYNN W. MORRILL, S. CARL MILLER, W. H. AMOS, and W. G. PARKER, intervenors below, suing on behalf of themselves and other cotton producers similarly situated (including JAMES WYNN THOMPSON, JR., A. W. FISHER, D. S. HOPSON, and ALLIE H. WARD, Administratrix, the original plaintiffs below), *Petitioners*,

v.

ERNEST L. DEAL, Individually and as Manager of the National Surplus Cotton Tax Exemption Certificate Pool, 1935, HENRY A. WALLACE, Individually and as Secretary of Agriculture of the United States, W. A. JULIAN, Individually and as Treasurer of the United States, JOHN B. PAYNE, Individually and as Comptroller of the Agricultural Adjustment Administration, and CHESTER C. DAVIS, Individually and as Administrator of the Agricultural Adjustment Administration, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

REPLY BRIEF OF PETITIONERS.

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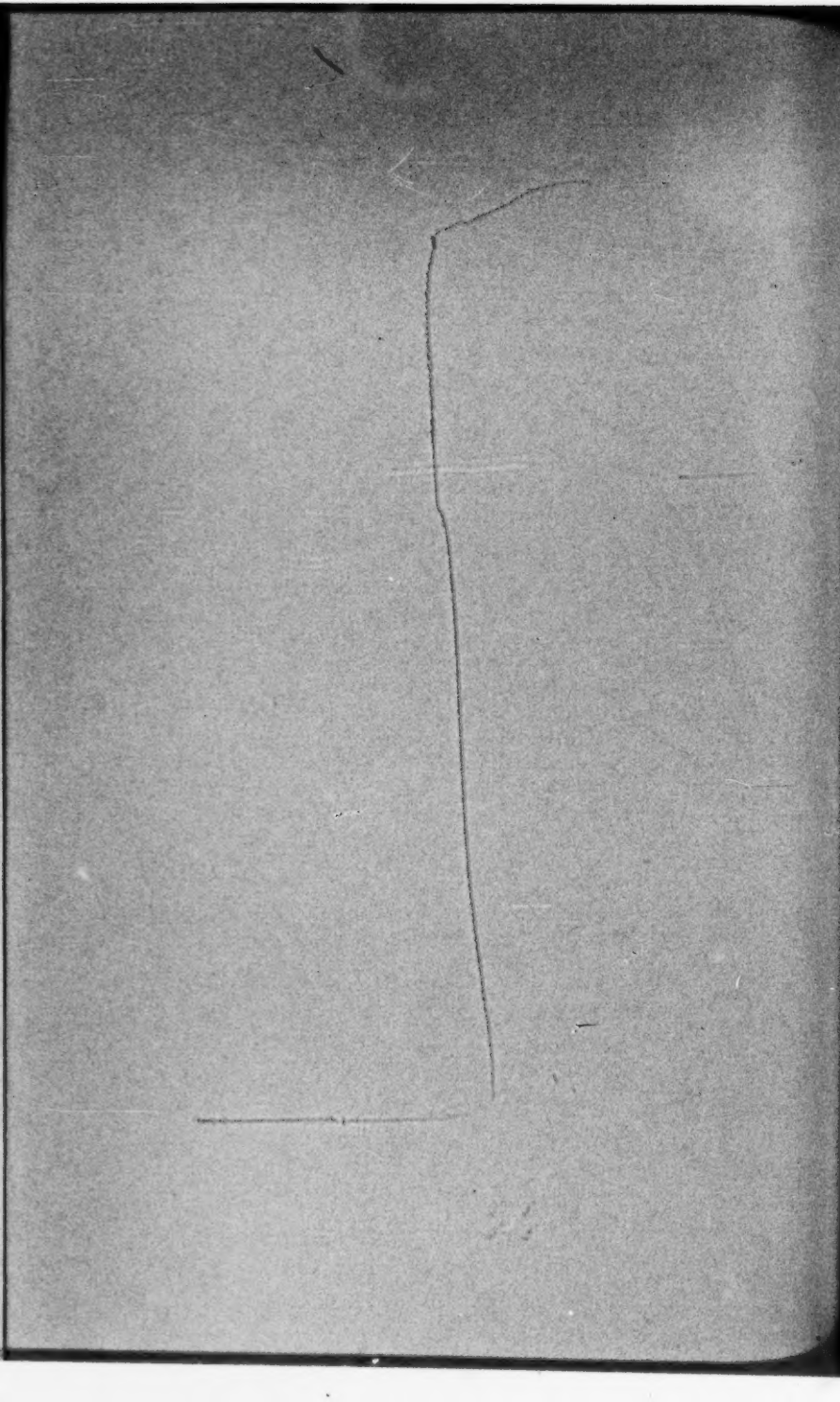

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REPLY BRIEF OF PETITIONERS.

The brief of respondents in opposition to the petition for a writ of certiorari was served on petitioners on February 9, 1945. This reply brief is filed pursuant to subdivision 4(a) of Rule 38 of the Revised Rules of the Supreme Court.

QUESTIONS PRESENTED.

In a footnote on page 2 of their brief respondents take exception to the statement of the questions presented as phrased by petitioners. It is only by diverting the attention of the Court from petitioners' question 3 that respondents can escape the consequences of their own *personal admissions* that the facts here involved are substantially as claimed by petitioners. If permitted to avoid these admissions, respondents then would not have to face petitioners' question 4.

The first question as stated by respondents appears to present in substance the first and second questions claimed to be presented by petitioners. Respondents' second question raises the same issue as that presented by petitioners' question 5 except that the parties differ on the fact of notice.[1]

STATEMENT.

The statement of the case made by respondents follows the findings of fact of the District Court. Since petitioners have assigned errors based on many of the findings of fact of the District Court, detailed exceptions to the statement of respondents will not be set forth herein. Petitioners suggest that the statement of the case as prepared by them (Pet. 4-10) correctly sets forth *all* the facts here involved.

On page 6 of their brief respondents in a footnote contend that Deal held office only until February 10, 1936. Since Deal was sued personally (Pet. 22), his official position is immaterial. Furthermore, he distributed over $5,000,000 of pool funds after February 10, 1936 (R. 501; Pet. 20), at which time he felt himself fully empowered to act. (Cf. his language at R. 839.)

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[1] Since $799,000 (including $784.00 paid by petitioner Miller) was not covered into the United States Treasury until April 30, 1936 (R. 567, 954, 984-985), after respondents were expressly notified of the claims of the class here involved (R. 836-837), it is difficult to understand respondents' implication that this money was received by the United States without notice.

Respondents also point out (Br. 9) that certain of the parties received certain benefit payments. While such a fact, if material, goes more to the merits of the case than to a consideration of the pending petition, it is believed that such benefit payments are no more relevant than would be pension payments from the Veterans Bureau. No issue is raised by the pleadings with respect to these benefit payments, petitioner Morrill did not receive one cent of benefit payments under any program (R. 711-713, 770), and respondents because of their coercion of the original plaintiffs (R. 993-994), lack the requisite clean hands to urge any such equitable defense.

ARGUMENT.

I.

Respondents contend (Br. 15) that there is no conflict between the Court of Appeals and the Court of Claims as was asserted by petitioners (Pet. 11). Surprisingly, however, respondent bottom their argument solely on the *Crain* case which was decided on a demurrer. The distinction between "general funds" and "trust funds" which respondents now urge (Br. 15), was clearly presented to the Court of Claims by the government in the *Brackin* case. (See pp. 23-30 of the petition for a writ of certiorari in *Brackin* v. *United States*, Oct. Term, 1942, No. 363.)[2] The government with knowledge of this distinction was opposing certiorari in the *Brackin* case because the United States had no interest in the fund (*Ibid.*, Brief in Opposition, p. 6, and cf., footnote 2), based in part on information from respondent Deal (R. 869-878), and was doing so almost contemporaneously with the filing herein by Deal of answers asserting that the claims presently before the Court "are, in effect, claims against the United States" (R. 246, 301).

[2] A court has power to take judicial notice of proceedings before it in a prior case. Cf. *United States* v. *Pink*, 315 U. S. 203, 216; *Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212, 217; *Dimmick* v. *Tompkins*, 194 U. S. 540, 548.

Petitioners respectfully submit that the conflict is apparent. It is also submitted that under principles of estoppel by judicial record, respondents may not now deny the conflict which was once recognized. As was said in *State Farm Mut. Auto. Ins. Co.* v. *Bonacci*, 8 Cir., 111 F. 2d 412, 419—

> A party can not in his own case, be heard by a court to deny today what he solemnly swore was true on yesterday, without some explanation or excuse.

Cf. *Axelrod* v. *Osage Oil & Refining Co.*, 8 Cir., 29 F. 2d 712, 729; *Metropolitan Life Ins. Co.* v. *Burch*, 39 App. D. C. 397, 404

II.

The *Stitzel-Weller Distillery* v. *Wickard* case on which respondents rely (Br. 17) presented a fact situation in which the United States was a trustee—the Secretary of Agriculture entering into the trust agreement there involved in his *official capacity*. Significantly the Court below in deciding the *Stitzel-Weller* case expressly distinguished that case from the instant proceeding on the ground that here no interest of the United States is involved (111 F. 2d 22). The issue, therefore, is simply whether under the Permanent Appropriation Repeal Act contributors to a trust can recover their contributions after the trust fails when the money is in the Treasury of the United States and the United States makes no claim to the money. It appears in all fairness that the courts should divert the payment to the contributors as was done in *Morgenthau* v. *Fidelity & Deposit Co. of Maryland*, 94 F. 2d 632. If the *Stitzel-Weller* case should be deemed to hold otherwise, however, then the two cited decisions are also in conflict and this Court should resolve their differences.

III.

Respondents conclude with the suggestion that they all acted without notice. Yet the facts show otherwise. This Court on January 6, 1936, declared the Agricultural Adjustment Act to be unconstitutional and strongly indicated that the Bankhead Cotton Act was also invalid. *United States* v. *Butler,* 297 U. S. 1, 71 (Cf. Pet. 21). If respondents were in doubt as to the legal authority for their actions at that time, they were all notified of the claims of plaintiffs on January 27, 1936, when the complaint in this suit was served on them (R. 116). They were also notified of the claims of the class by a letter from counsel for the original plaintiffs (R. 836-837).

Since respondents after these notices saw fit to distribute over $5,000,000 in derogation of the rights of petitioners and to place over $799,000 in the Treasury of the United States (R. 954)[3], it is believed they have no standing to assert that they should not be held personally liable. Certainly, respondents collectively could have refused to disburse the $5,000,000 until the rights of the parties were settled, could have paid the money into the registry of the District Court, or at least could have refrained from covering the money—then in their hands—into the Treasury of the United States. This is clear from the fact that under the latest regulations dealing with the pool, respondent Wallace reserved the right to prescribe how the funds in the pool "shall be handled and disbursed" (R. 43).

CONCLUSION.

Petitioners respectfully submit that a direct controversy exists between the holdings of the lower courts on a matter of interest to some 100,000 cotton producers. It is believed